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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
08/655,853	05/30/96	MCMASTER	H GLT-1540-R

IM22/0908

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EXAMINER

VINCENT, S

ART UNIT

PAPER NUMBER

1731

DATE MAILED:

09/08/00

69

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.

08/655,853

Applicant(s)

MCMASTER ET AL.

Examiner

Sean E Vincent

Art Unit

1731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- 1) ☒ Responsive to communication(s) filed on 14 August 2000.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-16,27 and 30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16,27 and 30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☒ The proposed drawing correction filed on 12 November 1998 is: a) ☒ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some \* c) ☐ None of the CERTIFIED copies of the priority documents have been:
1. ☐ received.
2. ☐ received in Application No. (Series Code / Serial Number) \_\_\_\_\_.
3. ☐ received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. & 119(e).

## Attachment(s)

- 15) ☐ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other: \_\_\_\_\_

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## DETAILED ACTION

### *Continued Prosecution Application*

1. The request filed on August 14, 2000 for a Continued Prosecution Application (CPA) under 37 CFR 1.53(d) based on parent Application No. 08/655853 is acceptable and a CPA has been established. An action on the CPA follows.

### *Drawings*

2. The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on November 9, 1998 have been approved by Examiner Griffin on February 8, 1999.

### *Specification*

3. The amendment filed August 14, 2000 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is shown in bold italics as follows: “ A plurality of *elongated quench tubes which are substantially parallel to each other*”; “ *The drive shafts extend between the elongated quench tubes, are oriented to be substantially perpendicular to those quench tubes.*”; “Similarly, *elongated, substantially parallel* quench tubes define the quench openings”; “The upper platen 22 is initially conformingly deformable to the shape of the lower platen 14 as the heated glass sheet 12 is moved with the lower platen and bent between the *platens about a direction parallel to the elongated direction of the quench tubes.*”

4. Applicant is required to cancel the new matter in the reply to this Office Action.

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claims 27 and 30 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

7. Claim 27 claims “elongated quench tubes which are substantially parallel to each other” and “deformable drive shafts which extend between the elongated quench tubes thereof and are oriented to be substantially perpendicular to those quench tubes” and “ glass sheet is bent along a direction parallel to the quench tubes” and “ desired bent shape is parallel to the quench tubes”; all of which are deemed to be new matter.

8. Claim 30 claims “elongated quench tubes which are substantially parallel to each other” and “deformable drive shafts which extend between the elongated quench tubes thereof and are oriented to be substantially perpendicular to those quench tubes” and “ lower platen is bent along a direction parallel to the quench tubes”; all of which are deemed to be new matter.

***Reissue Applications***

9. Claim 27 is rejected under 35 U.S.C. 251 as being improperly broadened in a reissue application made and sworn to by the assignee and not the patentee. A claim is broader in scope

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than the original claims if it contains within its scope any conceivable product or process which would have infringed the original patent. A claim is broadened if it is broader in any one respect even though it may be narrower in other respects.

10. Claim 27 is rejected under 35 U.S.C. 251 as being an improper recapture of broadened claimed subject matter surrendered in the application for the patent upon which the present reissue is based. See *Hester Industries, Inc. v. Stein, Inc.*, 142 F.3d 1472, 46 USPQ2d 1641 (Fed. Cir. 1998); *In re Clement*, 131 F.3d 1464, 45 USPQ2d 1161 (Fed. Cir. 1997); *Ball Corp. v. United States*, 729 F.2d 1429, 1436, 221 USPQ 289, 295 (Fed. Cir. 1984). A broadening aspect is present in the reissue which was not present in the application for patent. The record of the application for the patent shows that the broadening aspect (in the reissue) relates to subject matter that applicant previously surrendered during the prosecution of the application. Accordingly, the narrow scope of the claims in the patent was not an error within the meaning of 35 U.S.C. 251, and the broader scope surrendered in the application for the patent cannot be recaptured by the filing of the present reissue application.

11. In the instant case, the patented claims were to a glass bending and tempering apparatus. Claim 27 is directed to an apparatus for uniformly tempering a glass sheet. Claims 12-14 of 07/083685 were directed to a glass sheet tempering apparatus. Those three claims were canceled in response to a rejection under 35 USC 102(e) as being anticipated by Kahle (US 4376643) and therefore surrendered.

12. A supplemental reissue declaration is not required at this time because the claims in their present form were submitted already with the declaration of July 7, 2000. Entry of claim 30 was previously refused because of the presence of new matter.

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*Terminal Disclaimer*

13. The terminal disclaimer filed October 31, 1994 does not comply with 37 CFR 1.321(b)

and/or (c) because:

a. It fails to disclaim the terminal portion of any patent granted on the subject application.

b. It fails to disclaim the terminal portion of the subject patent.

14. A new Terminal Disclaimer is required to obviate the Double Patenting rejection over US Pat 4822398. The Terminal Disclaimer filed October 31, 1994 identified the "instant application" as 08/002090. A new Terminal Disclaimer identifying 08/665853 is required.

15. Accordingly, claims 1-16 stand under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-11 of U.S. Patent No. 4822398.

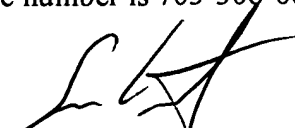
*Conclusion*

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sean E Vincent whose telephone number is 703-305-3607. The examiner can normally be reached on M - F (8:30 - 6:00) Second Monday Off.

17. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Stanley Silverman can be reached on 703-308-3837. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-7718 for regular communications and 703-305-3599 for After Final communications.

18. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0651.

S Vincent  
August 30, 2000



Sean E Vincent  
Primary Examiner  
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